

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9735 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ASHOK ALIAS MUNGO GANDUBHAI DEVIPUJAK

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for the Petitioner.
Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged the order of detention dated 14.8.2002, by
which the petitioner is detained as a 'bootlegger' under
the provisions of the Gujarat Prevention of Anti-social

Activities Act, 1985 ("PASA", for short). The petitioner is also served with the grounds of detention of the same date. In the said grounds of detention, there is a reference about 5 criminal cases which are filed against the petitioner under the Bombay Prohibition Act. After considering the aforesaid cases and after considering the statements of some witnesses, the authority formed an opinion that the petitioner is a 'bootlegger' and he is accordingly detained under the provisions of PASA. The said order is challenged by filing this petition.

At the time of hearing of the petition, learned Advocate for the petitioner submitted that the petitioner made a representation to the detaining authority on 9.9.2002. A copy of the said representation is also placed on record. It is submitted that even though the said representation was made on 9.9.2002 and even though the same was received by the detaining authority on 11th September, 2002, the detaining authority did not despatch the representation promptly to the appropriate authority, i.e. the State Government. Instead, the same was sent to the State Government on 13th September, 2002. It is, therefore, submitted that there is a delay of two days, for which, according to the petitioner, no reasonable explanation is given. The petitioner has also placed on record the registered A.D. slip, which clearly indicates that the representation was received by the office of the Police Commissioner on 11th September, 2002. The said registered A.D. slip is kept on the record along with the representation of the petitioner. In spite of the aforesaid facts, the In-charge Police Inspector, one Mr.B.V. Jani, has addressed a letter to the petitioner dated 13.09.2002. The said letter is addressed from the office of the Police Commissioner, Rajkot City, Rajkot. In the same, it is mentioned that the said representation is sent to the State Government as well as to the Advisory Board and in the said letter, it is also mentioned that the representation of the petitioner is received on 12.9.2002. However, considering the registered A.D. Slip, it is clear that the representation as such was received by the office of the Police Commissioner on 11.9.2002. Even in the affidavit-in-reply on behalf of the detaining authority, a stand is taken that the representation is received by the said Office on 12th September, 2002. However, in view of the documentary evidence, in the form of registered A.D. slip as well as on the basis of the stamp mark on the representation of the petitioner, which also states that the Police Commissioner's Office received the representation on 11th September, 2002, the stand taken in the reply is contrary to the evidence and

is not correct. The Authority has not been able to point out as to why, even though the representation was received by the office on 11th September, 2002, an attempt was made before the Court to project that the same was received on 12th September, 2002. In that view of the matter, the delay of one day is not explained. In fact, the Authority is under the impression that they received the representation on 12th September, 2002, even though, in fact, they received the same on 11th September, 2002. It is true that it is not a matter, where there is a long delay. However, the authorities are required to state correct facts before the court and even delay of one day is required to be explained appropriately, which has not been done in the instant case. There can be a satisfactory explanation of delay of a long period and there may not be satisfactory explanation even for a short period. Here, in the instant case, even though the representation was received on 11th September, 2002, the authority has stated that it was received on 12th September, 2002, with the result that there is no explanation for the delay of one day. On that ground, the order of detention is required to be set aside, especially when the authority is not aware about the fact that, as such, the representation was received by the office of the Police Commissioner on 11th September, 2002 itself. In that view of the matter, the order of detention is required to be set aside.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

25th March, 2003 (P.B. Majmudar, J.)

(apj)